IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1070

HARRY KOHLBERG,
Petitioner,

v.

JOSEPH LYNN WALKER
Respondent.

BRIEF OF RESPONDENT

OPPOSING WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

L.S. Parsons, Jr.
Parsons, Steffen & Moore
1108 Maritime Tower
Norfolk, Virginia 23510

Archie L. Boswell
Wayne G. Souza
Boswell & Souza
1225 Virginia National Bank Bldg.
Norfolk, Virginia 23510
Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1070

HARRY KOHLBERG,

Petitioner

v.

JOSEPH LYNN WALKER,

Respondent

BRIEF OF RESPONDENT

OPPOSING WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Respondent, Joseph Lynn Walker, prays that this Court not issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit and respectfully submits his reasons in opposition thereto.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, the opinion of the United States District Court for the Eastern District of Virginia, and the opinion of the United States Bankruptcy Judge at Norfolk, Virginia are printed in Petitioner's petition at pages 48, 55 and 60 respectively.

None of those opinions are published.

QUESTIONS PRESENTED FOR REVIEW

The questions for review are as stated in the Petition for Certiorari at pages 3 and 4.

STATEMENT OF THE CASE

This case involves a discharge in bankruptcy granted to the Respondent Walker by the Bankruptcy Judge on June 3, 1976, on a voluntary petition of individual bankruptcy filed by Walker

on December 3, 1975.

After 30 years of service as a naval officer, Kohlberg retired from the U.S. Navy in 1963 and joined the Joseph L. Walker Realty Corporation as a real estate salesman. He soon became the star salesman for the Walker Company, selling millions of dollars worth of real estate and earning thousands of dollars of commissions and bonuses. (App. 23-25).

In 1966, Joseph L. Walker Realty Corporation formed a partnership with Wellington Woods, Inc., and the said partnership traded as Walker Realty Company until approximately the time of Walker's bankruptcy. (App. 89).

Accordingly to the testimony of the Petitioner, the Walker Realty Company was doing a tremendous business, with many closings pending, but it had substantial cash flow problems and such problems continued throughout Kohlberg's employ-

ment and of these problems he was aware. (App. 60 and 61, 68, and 134).

Beginning in 1963, Kohlberg invested or deposited certain of his individual funds in the corporation. He received interest thereon at 1% per month. There was no allegation of any false pretenses or representations in connection with funds so deposited during these early years.

The company was slow in meeting payrolls and commissions, and at or about April 6, 1967, the Petitioner, at a sales meeting was presented with an unsigned bonus check marked "non-negotiable" in the amount of $3,430.25 and then informed privately that the company did not have the funds at that time to cover the check. (App. 32 and 33).

In 1967, prior to November 6, 1967, certain discussions took place between Kohlberg, Walker, and other representa-

tives of the company about the deferral of the payment of commissions to salesmen as a tax deferral device. (App. 41, 42 & 43).

Kohlberg consulted his attorney as to the tax aspect of the deferral of commissions and the sufficiency of certain real estate and business ventures as collateral and gave instruction in writing that the payment of his commissions be deferred. A copy of the Kohlberg letter of November 8, 1967, to this effect (Defendant's Exhibit 4) is reproduced hereafter, at page 35.

On cross-examination concerning this letter, which referred to Owen Pickett as his lawyer, Kohlberg responded varyingly as follows: "that he had not had an attorney--that he hadn't consulted an attorney--that someone else was his attorney--that the memo was in fact signed by him--that he didn't recall

it--that he made a phone call and got a kind of answer--that Pickett wasn't really his attorney, and that he didn't charge me for the advice." (App. 80 and 81).

Kohlberg deferred the receipt of certain of his commissions from 1967 thru 1970 and then terminated the arrangement after difficulty with the Internal Revenue Service. (App. 54).

Petitioner sets forth, at pages 20 et seq., short portions of out of context testimony of Kohlberg and others with respect to the transfer of funds among accounts and related matters. The Bankruptcy Judge heard and evaluated all of this together with the remainder of the evidence prior to his ruling.

Respondent summarized all of such matters in his brief to the Circuit Court as follows:

By way of summary of the accounts: claimant's investments of noncommission money went into the Corporation Special Kohlberg Accounts 1 and 2, Plaintiff's Exhibit's 5 and 6, 7 and 8 respectively. After the partnership was formed, the balances were transferred to the Partnership Kohlberg Special Account (Plaintiff's Exhibit 10) and ultimately to Kohlberg's consolidated AR Kohlberg Account #246 (Plaintiff's Exhibit 13).

Claimant's deferred commissions were recorded in his Accrued Commissions Account during the time commissions were deferred, 1967-1970, and then transferred to his consolidated AR Kohlberg Account #246 (Plaintiff's Exhibit 13). All the Kohlberg claims were transferred to Plaintiff's Exhibit 13 and it was from that account that the balance for the note of September 5, 1973 was determined (App. 51), after the claimant had received and reviewed copies of the records of his transactions.

Plaintiff's Exhibit 11 was an account of certain commissions which were payable to him, which were transferred to his deferred commissions (Plaintiff's Exhibit #9) and Plaintiff's Exhibit 12 was a listing of commissions paid to claimant Kohlberg over the period covered which was furnished to him for use in connection with the preparation of his income tax

returns.

By letter in April, 1973, Kohlberg demanded that his accounts receivable be brought up to date, and that since he would no longer be with the company, he wanted a note signed by all the owners of Walker Realty Company and each signature witnessed and notarized. (II App. 11).

After further negotiations a note in the amount of $150,000.00, payable to Kohlberg was issued by the Joseph L. Walker Realty Company and individually endorsed by Respondent Walker. (App. 51).

The bankruptcy petition of Respondent Walker was filed on December 3, 1975. Pursuant to § 17c(2) of the Bankruptcy Act, the Court entered its order setting March 3, 1976 as the last day for the filing of objections to the dischargeability of a debt under clauses

(2), (4) or (8) of §17a of the Act.

On February 20, 1976, Kohlberg filed a complaint alleging nondischargeability of a debt to him under §17a(2) as follows:

> 1. Joseph Lynn Walker, bankrupt, obtained from Plaintiff Harry Kohlberg the sum of $148,900.00 from 1967-1973 as a result of oral representations made to Plaintiff that Defendant was solvent and that Defendant had funds to repay Plaintiff, with interest, on demand.
>
> 2. Defendant knew during said period of time that he was not solvent and that he did not have funds to repay Plaintiff, with interest, on demand. Defendant intended to induce Plaintiff to advance the money on the basis of the representation.
>
> 3. Defendant obtained money from Plaintiff by means of the pretenses and false pretenses.
>
> 4. Said false pretenses and representations were made with an intent to induce Plaintiff to advance funds to Defendant in the sum of $148,900.00.

The complaint was duly answered and set for hearing.

On April 5, 1976, Kohlberg filed a motion for leave to amend complaint, which proposed amendment read as follows:

> Defendant bankrupt created debts by his fraud, embezzlement, misappropriation, or defalcation of funds due the plaintiff while the bankrupt was acting as an officer or in a fiduciary capacity.

The Bankruptcy Judge refused the amendment as is more particularly discussed under Issue II herein, pages 26 to 31, and a discharge was entered after a lengthy hearing on the merits.

On appeal to the District Court, the order of discharge was reversed, and the Fourth Circuit Court of Appeals reversed the District Court and reinstated the discharge, from which Petitioner now seeks certiorari. The orders of the Bankruptcy Judge, the District Court, and the Circuit Court are reprinted in Kohlberg's petition at pages 60, 55 and 48, respectively.

ARGUMENT

I

Petitioner's first question for review presents a question expressly not decided or considered by the Fourth Circuit Court and is as follows:

> I. Where the Bankruptcy Judge ruled that petitioner was not entitled to relief because of estoppel by asking for and accepting a promissory note for the amount of his claim and cited two authorities which were not relevant, and the United States District Court reversed the Bankruptcy Judge and held that petitioner's judgment was not dischargeable in bankruptcy, did the Court of Appeals err in holding that Bankruptcy Rule 810 required the District Court to accept the referee's findings of fact unless they are clearly erroneous, since the Bankruptcy Judge's holding of estoppel, was a conclusion and inference from facts not in dispute?

The Fourth Circuit Court of Appeals stated:

> Because we believe that the bankruptcy court found that Kohlberg did not reasonably rely on the statements made by Walker, we do not have to consider the

> issue of whether the taking of the note in satisfaction of the debt should estop Kohlberg from preventing the discharge of the obligation. (Petition for certiorari, at 51).

Thus, Petitioner's question I is entirely insufficient as a basis for certiorari.

The Circuit Court specifically did not reach or make any determination as to the effect of the acceptance of a promissory note and based its decision on the finding of lack of reasonable reliance. The two authorities referred to in Petitioner's Issue I as being "not relevant" refer to the acceptance of a note which was the issue not decided by the Circuit Court.

It is a firmly established rule that a review on writ of certiorari will be granted only where there are special and important reasons therefor. Sup. Ct. R. 19(1); 16 Federal Practice and Procedure,

Jurisdiction §4004, (Wright, Miller, et als. 1977), note 17 (Court of Appeals are divided on the question, Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397, 404 (1976); Because of the obvious importance of the question, U.S. v. Janis, 428 U.S. 433 (1976); To address the important issues raised, Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 546 (1976); To resolve the important constitutional question, Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976).

Supreme Court Rule 19 indicates the character of reasons which will be considered, and it is respectfully submitted that the basis for certiorari jurisdiction maintained by Petitioner herein is not within those set forth in Rule 19, or the decisions of this Court, and has a marked lack of overall, national importance.

The bankruptcy court found that Kohlberg was estopped from preventing discharge of the debt because having "positive knowledge of the (bankrupt's) financial difficulties certainly as early as 1967, (he) nevertheless, agreed at that time to a deferment of his commission payments. He rode along as a willing sucker." (Petition for certiorari, at 66). The District Court affirmed these "fact findings" and further stated that they were "supported by substantial evidence", (Petition for certiorari, at 56), but went on to reverse the bankruptcy court on other grounds. (Petition for certiorari, at 59). The Court of Appeals reversed the District Court, holding that the District Court did not adhere to the proper standard of review of the bankruptcy court's aforesaid findings of fact. (Petition for certiorari, at 48). The aforesaid findings

are not inferences drawn by the bankruptcy court from facts not in dispute.

The case at bar is not one where the facts are "not in dispute" as assumed by Petitioner at page 34 of his petition. Kohlberg vehemently denied on direct examination that he had any knowledge about the financial difficulties. This testimony was outweighed, in the opinion of the Bankruptcy Judge, by Kohlberg's admissions on cross-examination, the testimony of other witnesses which contradicted his, and the documentary evidence. (See, Statement of Case herein).

As held by the Fourth Circuit, the determination of a Bankruptcy Judge, on appeal to a District Court, stands in much the same footing as a finding of fact by a District Court on an appeal from that Court to a Court of Appeals and is not to be disturbed unless "clearly erroneous". This principle is

fundamentally based on the time honored principle of American jurisprudence that great weight is to be given the determination by the trier of the facts, (here the Bankruptcy Judge), who saw and heard the witnesses, observed their demeanor and the intonations of their voices, and is thereby better able to make findings of fact than an appellant court reviewing a cold record. Bankruptcy Procedure Rules 810, 752(a); In re Entertainment, Inc., 375 F. Supp. 390 (E.D. Va 1974); In re Romero, 535 F.2d 618 (10th Cir. 1976). See also, FRCP 52 from which Rule 752 is an adaptation and should be construed accordingly; see Advisory Committee's note to Rule 752 at page 120, U.S.C.A.

On the basis of the foregoing, one or more of the indispensable elements to support a finding of nondischargeability of a debt under §17a(2) of the Act was

missing, certainly the element of reasonable reliance.

Reasonable reliance on false statements or representations is an essential requirement to prove, by the requisite clear and convincing evidence, nondischargeability under §17a(2). 1A Collier on Bankruptcy, Section 17.6, page 1634 et seq. Sweet v. Ritter Finance Co., 263 F. Supp. 540, 543 (W.D. Va 1967). In re Dolnick, 374 F. Supp. 84, 90 (N.D. Ill. 1974); In re Dye, 330 F. Supp. 895 (W.D. la. 1971), aff'd In re Humphries, 469 F. 2d 643, 644 (5th Cir. 1972); Bazemore v. Stehling, 396 F. 2d 701 (5th Cir. 1968); Greenfield State Bank v. Copeland, 330 F. 2d 767 (9th Cir. 1964); First Credit Corp. v. Behrend, 172 N.W. 2d 668 (1970); Sun Finance v. Cononico, 177 N.E. 2d 84 (1959).

Petitioner's brief, beginning at page 35, cites a number of cases for the proposition that "where the factual determination is primarily a matter of drawing inferences from undisputed facts, the clearly erroneous rule does not apply".

It should be noted, however, from Petitioner's first case, In re Morasco 233 F.2d 11, (2nd Cir. 1956) (which involves determination of law as to whether a conditional sale was not legally effective,)that the Circuit Court is equally free to draw its own inferences. After stating the "clearly erroneous" rule, the court stated:

> But where credibility of witnesses is not involved and the facts are undisputed, the District Judge and the Court of Appeals can more freely draw differing inferences from the undisputed facts. (In re Morasco, at 15).

In the case at bar, credibility was

very much involved and the facts were far from undisputed; accordingly, the Morasco case is inapplicable.

Moreover, even if the case at bar had been one of undisputed facts, the freedom of the Circuit Court to differ with and reverse the District Court (as it did and which Petitioner now challenges) is the true rule enunciated by the Morasco case.

In Shaw v. U.S. Rubber Co., Navgatuck Chemical Div., 679 F. 2d 679 (5th Cir. 1966), the question turned on whether or not the alleged recipient of a preference was chargeable with notice of insolvency because he would have known of same had he made inquiries, a question largely of law, and very different from the issues of the case at bar.

In Stafos v. Jarvis, 477 F. 2d 369 (10th Cir. 1973), the Circuit Court "specifically (concurred) with the

findings of the Referee and the Trial Court" relating to the recommendation of the trustee as to the extent of the bankrupt's claimed homestead exemption. It is submitted that this case is distinguishable on its face with the case at bar.

In the case of Solomon v. Northwestern State Bank, 327 F.2d 720 (8th Cir. 1964), the error of the Referee was one of law, involving the interpretation of the law of the State of Minnesota, relating to a factor's lien agreement. The Court, at page 724, specifically stated:

> There is much authority to the effect that ordinarily, when a Referee in Bankruptcy has made findings of fact and the Referee has actually heard the evidence, great weight is attached to his conclusions, and they will not be disturbed unless clearly erroneous. (citations omitted) In the present case, however, the Referee's error was one of law in that

> he gave the wrong legal significance to the facts.

In Minnick v. Lafayette Loan and Trust Co., 392 F.2d 973 (7th Cir. 1968), the Referee denied a discharge and the District Court affirmed that denial. The Circuit Court found that there was not sufficient evidence to support the denial of a discharge and ordered same granted. It is paramount to note that in this case cited by Petitioner, the Seventh Circuit confirmed the clearly erroneous standard by holding that one of the findings of the referee

> must be set aside as being without support in the record, and if in its entirety it be a finding of fact then it is clearly erroneous. In our judgment, a clear mistake has been made. (Minnick, at 976).

This case is authority for the Circuit Court to apply the clearly erroneous test and not for the proposition petitioner asserts.

The same is true in the case of Costello v. Fazio, 256 F.2d 903 (9th Cir. 1958). The Circuit Court disagreed with both the Referee and the District Court on the question of the legal effect of dealings involving notes between the bankrupt and its stockholders and officers.

In the case of Namoff v. Hyland Electrical Supply Co., 275 F.2d 14 (7th Cir. 1960), the Referee concluded that the Namoff brothers were not in partnership. The District Court found that such conclusions and the other findings of the Referee were clearly erroneous and held there was a partnership. The Circuit Court stated that it took the same view of the facts as did the District Court and affirmed that Court's setting aside of the conclusions of the Referee.

In the case at bar, the situation is markedly different. The District Court did not find the Bankruptcy Judge's fact findings to be clearly erroneous; in fact, it specifically found they "are supported by substantial evidence" (Petition for Certiorari, at 56) then reversed on other grounds. The Circuit Court rejected the approach of the District Court and affirmed the findings of the Bankruptcy Court.

It is submitted that the purport of these cases is that when disputed facts are involved, as in the case at bar, the Bankruptcy Judge's fact findings should not be disturbed unless the District Court finds them "clearly erroneous", which it did not do herein. Further, these cases cited by Petitioner support the proposition that the Circuit Court is free to view the facts and the

law differently from that of the District Court, whether the District Court affirmed or reversed the Bankruptcy Court.

Contrary to Petitioner's contention at page 36, the Bankruptcy Court not only based the discharge on the taking of the note, but also upon Kohlberg's "positive knowledge" of Walker's financial difficulties and that "according to the law and the evidence, that the specifications in said complaint have not been sustained." (Petition for Certiorari, at 66-67).

Respondent agrees, as an abstract principle, that the taking of a state court judgment on a note does not affect the dischargeability of the debt; Petitioner cites Sweet v. Ritter Finance Co., 263 F.Supp. 540 (W.D. Va. 1967) on this proposition.

The essence of Sweet is that Ritter

Finance did not improve its position by securing a state court judgment against Sweet, that the objector must prove positive fraud, and all the elements of his case, which included reasonable reliance, and fraudulent intent, both of which the Sweet court found the evidence did not support. Hence, the discharge granted by the Referee was reaffirmed.

The other authorities cited in this section of the Petitioner's argument (page 37) support that same proposition, which, it is submitted, has not been at issue here. The purpose of the April 19, 1976 hearing in the Bankruptcy Court was in fact to go behind the judgment and therein the Bankruptcy Judge did in fact go behind the judgment and investigated the matter thoroughly, considered all the evidence and held as hereinabove stated.

II

Petitioner Kohlberg's second contention for review challenges the entry of the April 19, 1976 Order of the Bankruptcy Judge, which Order denied the Petitioner's motion for leave to amend his complaint to assert an additional ground of objection to dischargeability under §17a(4), to be filed after the date fixed by the bar Order under §17c (2).

The bar Order (entered December 15, 1975) fixed March 3, 1976, as the last day for filing complaints alleging non-dischargeability under clauses (2), (4), and (8) of §17a. (App. 3). Petitioner's original objection asserted nondischargeability of a debt under §17a(2), alleging the obtaining of money by false pretenses and representations thereunder. (App. 4).

On April 5, 1976, Petioner offered a

paper labeled "Motion to Amend Complaint" which merely paraphrased the language of §17a(4) and alleged no facts and specified no actions, events, omissions, or dates. (App. 6).

After a hearing on the motion, the Bankruptcy Judge did not allow the "Amendment" on the basis that under §17c(2) and Bankruptcy Rule 409, the amendment was not timely filed, that the limitations specified in the bar Order of December 15, 1975, are like the limitations of a statute of limitations, and that after the passing of the last day for filing complaints, a <u>new ground</u> of objection could not be brought in by "amendment" (App. 8).

Under Federal Rule 15(a) and case law, the allowance of amendments lies in the discretion of the trial court and refusal to permit amendments is not subject to review on appeal except for abuse of

discretion.

Comie v. Buchler Corporation (9th Cir. 1971) 449 F. 2d 644; Albee Homes, Inc. v. Lutman (3rd Cir. 1969) 406 F. 2d 11; D'Ippolito v. Cities Service Company (2nd Cir 1967) 374 F. 2d 643; Ziegler v. Atkin (10th Cir. 1958) 261 F. 2d 88; Petzel v. Chicago B. & O. R.R. (8th Cir. 1953) 202 F. 2d 817; Young v. Garrett (8th Cir. 1947) 159 F. 2d 634.

Rule 15 does not, therefore, mandate the granting of such leave nor limit the discretion of the Bankruptcy Judge to deny same.

Rule 15(b), cited by petitioner, provides for the amendment of pleadings to conform to the evidence, which is not applicable here since it was not sought by petitioner, and Rule 15(c), likewise cited, provides for the relation back of amendments which applies when amendments are granted.

It is paramount to note that by its 1970 amendments, Congress has made mandatory the expeditious filing of objections when it provided in §17c(2):

> A creditor who contends that his debt is not discharged under clause (2), (4) or (8) of subdivision (a) of this section must file an application for determination of dischargeability within the time fixed by the court pursuant to paragraph (1) of subdivision (b) of section 14 of this Act and, unless an application is timely filed, a debt shall be discharged. (Emphasis added, See also, In re Wooding, 390 F. Supp. 451 (Kansas 1974).

With respect to the fact that the pleading sought to be filed after the bar date is called an "amendment", it is submitted that 1A Collier on Bankruptcy (14th ed.) Section 14.07, at 1290, et seq., and the cases therein cited, fully covers and is dispositive of this issue.

> ...(A)fter expiration of the time fixed by the Court for the filing of a complaint objecting to discharge, additional or new grounds of objection may not be added by amendment, unless the Court first

> grants an extension of time or the bankrupt has concealed facts until that time. To permit an amendment which brings in new grounds of objection after the time fixed for filing complaints objecting to discharge under circumstances other than as noted above would be to defeat Bankruptcy Rule 404(a) which is intended to compel diligent prosecution of objections and permit a prompt disposition of the question of the bankrupt's right to a discharge.

Appellee cites Charles Edward and Associates v. England, 301 F. 2d 572 (9th Cir. 1962) and In re Sturdevant, 415 F. 2d 465 (5th Cir. 1969). These cases are markedly different in that there were timely objections filed in each of those cases, and the question was the allowance of an amendment to make more specific, or to modify allegations as to a specific objection already made, and of course amendment was proper in each of those cases. In the case at bar, there was no timely objection under §17a(4) and consequently nothing to

amend. The term "amendment" is used as a cloak for an attempt to file a new and different objection to dischargeability after the time therefor had passed.

CONCLUSION

1. The Petitioner Kohlberg had positive knowledge of Walker's financial difficulties certainly as early as 1967. The Circuit Court based its decision on Kohlberg's knowledge and the fact that Kohlberg failed to prove reasonable reliance on any representation which may have been made. Petitioner seeks to base his prayer for a writ of certiorari on a proposition which the Circuit Court did not consider or use as a basis for its decision. The fact findings of the Bankruptcy Judge were not "clearly erroneous" and they were approved by the District Judge rather than being found erroneous. The findings of the Bankruptcy Judge were fact findings after

hotly contested and disputed evidence and not mere conclusions or inferences as contended by Petitioner.

2. The Petitioner sought to introduce a new ground of objection under a different subsection of Section 17 of the Bankruptcy Act under the guise of an "amendment," and the Bankruptcy Judge correctly held that this attempt was prohibited under the positive requirement of Section 17c(2) of the Bankruptcy Act and Rule 409 of the Rules of Bankruptcy Procedure.

3. The petition for certiorari should be denied.

Respectfully submitted,

Archie L. Boswell

L. S. PARSONS, JR.
Counsel for Joseph Lynn Walker

Archie L. Boswell
Boswell and Souza
1225 Virginia Nat'l Bank Bldg.
Norfolk, Virginia 23510

L. S. Parsons, Jr.
1108 Maritime Tower
Norfolk, Virginia 23510
Counsel for Respondent

CERTIFICATE OF SERVICE

Pursuant to Rule 33, paragraph 3 (b) of the Rules of the Supreme Court, I hereby certify that service of the foregoing Brief of Respondent Opposing Writ of Certiorari was made on Harry Kohlberg, Petitioner, by depositing three printed copies of the said Brief of Respondent in a United States mail box, with first class postage prepaid, addressed to Howard I. Legum, Attorney for Harry Kohlberg, 720 Law Building, Norfolk, Virginia 23510, on or before the 1st day of February, 1979.

L. S. PARSONS, JR.
Attorney for Respondent,
a member of the bar of
the Supreme Court of the
United States

JOSEPH L. WALKER REALTY CORP.

7831 MILITARY HIGHWAY, NORFOLK 13, VIRGINIA
PHONE 588-5431

TO Mr. Joseph Walker

Via. Mr. Bob Mullins

DATE November 8, 1967

In reference to our discussion relating to deferred tax for current year 1967 my attorney, Owen Pickett, has advised me that the recommendation relative to deferred taxes is acceptable and legal, however, that the land or business venture related to the lots in East Ocean View are not considered as stable collateral.

Therefore, it is requested that my tax bonuses for 1966 and 1967 be deferred to 1968 income and that the 1967 bonus payable on April 15, 1968, be credited to my special account on that date without check transfer.

I anticipate deferring all future 1967 commissions until 1968 for income purposes and such income to be held in a deferred account with interest payable to me at 1% per month.

It is, therefore, definitely anticipated that it will be necessary to pay my 1967 Federal and State income taxes from special account No. 1 prior to tax due dates set up by the State and Federal Government.

By Signed H. Kohlberg

DEFENDANT'S EXHIBIT #4

JOSEPH L. WALKER REALTY CORP.

7831 MILITARY HIGHWAY • NORFOLK 13, VIRGINIA • PHONE 588-543[illegible]

DEFENDANT'S EXHIBIT

TO Mr. Joseph [illegible]r

DATE

Via. Mr. Bob Mullins

DATE November 8, 1967

In reference to our discussion relating to deferred tax for current year 1967, my attorney, Owen Pickett, has advised me that the recommendation relative to deferred taxes is acceptable and legal, however, that the land or business venture related to the lots in Blue Heron View are not considered acceptable collateral.

Therefore, it is requested that my tax bonuses for 1966 and 1967 be deferred to 1968 income and that the 1967 bonus payable on April 15, 1968, be credited to my special account on that date without check transfer.

I anticipate deferring all future 1967 commissions until 1968 for income purposes and such income to be held in a deferred account with interest payable to me at 1% per month.

It is, therefore, definitely anticipated that it will be necessary to pay my 1967 Federal and State income taxes from special account No. 1 prior to tax due dates set up by the State and Federal Government.

SIGNED H. Kohlberg

BY

INSTRUCTIONS TO SENDER:

KEEP YELLOW COPY. 2. SEND WHITE AND PINK COPIES WITH CARBON INTACT.

INSTRUCTIONS TO RECEIVER:

1. WRITE REPLY. 2. DETACH YOUR COPY. KEEP PINK COPY. RETURN WHITE COPY TO SENDER.

35A